IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 1412/2006

SHYODAN Vs. SHYORAM & ORS.

DATE: 10.09.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Virendra Dangi for the petitioner.
Mr. Neeraj Kumar for the respondents.

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The matter comes up on the application under Article 226(3) of the Constitution of India for seeking vacation of the ex parte interim order dated 23.02.2006 granted by this Court.

I have heard rival submissions of the respective parties on the application under Article 226 (3) of the Constitution of India as well as on the merits of the case.

This writ petition is directed against the order impugned dated 09.01.2006 passed by the Additional Civil Judge (Jr. Division) & Judicial Magistrate, First Class, No. 5, Jaipur District, Jaipur, by which the Court below has allowed the application of the plaintiffs-respondents under Order 14 Rule 5 CPC, whereby the applicants prayed for

deletion of issue Nos. 1 and 4 which are reproduced hereunder:-

> "(1) आया वादपत्र के पैरा संख्या-1 में वर्णित सम्पत्ति वादीगण के स्वामित्व व आधिपत्य की है?
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> (4)आया प्रतिवादीगण विवादग्रस्त सम्पत्ति के आधे हिस्से के मालिक व काबिज हैं इस कारण यह दावा चलने योग्य नहीं है?"

The Court below having considered the rival submissions and after carefully going through the judgments referred by the respective parties, allowed the application moved on behalf of the plaintiffs-respondents and in place of issue Nos. 1 and 4 as stated herein above, framed the following issues:-

> "(1) आया कि वाद पत्र के पैरा संख्या- 1 में वर्णित सम्पत्ति पर वादी विधिवत रूप से काबिज है?
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> तनकी सं (4) आया प्रतिवादीगण विवादित सम्पत्ति के आधे हिस्से पर वैधानिक रूप से काबिज हैं और इस कारण वादी स्थाई निषेधाज्ञा का अनुतोष प्राप्त करने का अधिकारी नहीं है?"

While framing the aforesaid issues in place of issue Nos. 1 and 4, the Court has observed that since in the suit the plaintiffs have only prayed for permanent injunction regarding possession over the disputed land and it is not partition/declaration of the suit and, therefore, the Court below thought it proper to frame the aforesaid issues in place of issue Nos. 1 and 4.

Learned counsel for the petitioner, in support of his submissions, placed reliance on the judgment rendered by the Karnataka High Court in the case of **Venkataswamy Vs. Narayana A. and others, AIR 2002 Karnataka 326,** wherein in para No. 11 the Karnataka High Court has observed as under:-

> "11. In a suit filed for bare injunction when the pleading of the parties warrant framing of an issue regarding title any adjudication of the suit only from the stand point of possession without addressing to the question of title would be only a superfluous approach and would not be a meaningful and effective adjudication. Further giving rise to multiplicity or proceedings. Therefore, keeping in view the legislative purport and intent of the provisions of Section 26 of Karnataka Court-fees and Suit Valuation Act it was just and necessary for the trial Court to have framed an issue with regard to the title on the basis of the averments made by teh defendant in the written statement. In that view of the matter, I find that the trial Court ought to have framed an issue with regard to the title to the property and should have called upon the plaintiff to pay Court fee on one half of the market value."

Placing reliance on the aforesaid judgment, the learned counsel for the petitioner submits that the application under Order 14 Rule 5 CPC filed on behalf

of the plaintiffs-respondents has wrongly been allowed by the Court below.

On the other hand, learned counsel appearing for the plaintiffs-respondents/applicants stated at bar that the petitioner has filed the suit for partition and since the suit for partition is still pending and in the suit only the possession is in dispute, therefore, the application for seeking permanent injunction has been filed.

In view of these facts, I find no illegality or error apparent on the face of the record and the Court below has not committed any error while allowing the application of the plaintiffs-respondents under Order 14 Rule 5 CPC and framing two new issues in placed of issue Nos. 1 and 4 vide its order impugned dated 09.01.2006.

consequently, the writ petition fails being devoid of merit and the same is hereby dismissed.

The application under Article 226(3) of the Constitution of India stands allowed and the ex parte interim order dated 23.02.2006 granted by this Court is vacated. The stay application also stands rejected.

(K.S. RATHORE),J.

/KKC/